

EXHIBIT 37

Filename: pe
Client: Bezirksgericht Luzern
Job ID: UK0055290
Date Due: 11/28/2014
Transcribed by TransPerfect

[00:00:00]

DAVID ROSS ELLIOT: If we are ready to go on record if may I remind you that has a mobile phone, that would be great, particularly if you are wearing a microphone in particular so we can hear [INDISCERNIBLE 00:00:14]. Only because it will just cause interference if... And otherwise, as usual I'll be there to capture and introduce the case, I'll ask everybody to introduce themselves and who they represent. And then Judge Andreas Gally will lead the proceedings. Bear with me please.

Good morning, this is the beginning of DVD 1, volume 1, in the video deposition of Mr Patrick Ernay, this is being held at the District Court of Lucerne, Grabenstrasse 2, Ground Floor, Courtroom 1, Lucerne 6002, Switzerland. And it's being heard before Judge Andreas Gally. This is being taken on 24th, sorry, 26th of June 2014 at 8.59am as indicated on the video screen. This deposition is being taken in the matter of Irving H Picard, Trustee for Liquidation of Bernard L Madoff Investment Securities LLC –v- J Ezra Merkin, Gabriel Capital LP, Ariel Fund Ltd, Ascot Partners LP, and Gabriel Capital Corporation. The master case number is ADV Pro number 08-01789(BRL). And the case here 09-1182(BRL), and this is being heard before United States Bankruptcy Court for the southern district of New York. The court reporter is Elsa Williams of US Legal Support, and my name is David Ross Elliot, I am the official videographer here, also on behalf of US Legal Support. There's an interpreter present today, Irene Baselbeck, and at this point I'd now like to ask all of counsel to introduce themselves please.

EDWARD J JACOB: Edward J Jacob, for the trustee.

CHRISTIAN WEBER: Christian Weber from EBD Lawyers, for the trustee
[INDISCERNIBLE 00:03:16].

NEIL STEINER: Neil Steiner from [INDISCERNIBLE 00:03:20], US counsel for J Ezra Merkin and Gabriel Capital Corporation.

MARC RUSSENBERGER: Marc Russenberger, RKR Zurich, Swiss counsel for Mr Merkin.

PHILIP MULDER: Philip Miller [INDISCERNIBLE 00:03:30] representing Ascot Partners LP, Ariel Fund Ltd and Gabriel Capital LP.

DOMINIK HOHLER: Dominik Hohler, also Swiss counsel for the witness.

MALE: [INDISCERNIBLE 00:03:42]

TIMOTHY MUNGOVEN: Timothy Mungoven, Proskauer Rose, counsel to the witness, US counsel to the witness.

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PE: Reichmuth Matterhorn was invested in two funds which were managed by Ezra Merkin.

TRANSLATOR: Reichmuth Matterhorn had invested in two funds that were managed by Ezra Merkin. Did I understand you correctly? When I started to work in 2004 Reichmuth Matterhorn had invested in two funds managed by Ezra Merkin.

MALE: Have you ever met Ezra Merkin?

TRANSLATOR: Have you ever met Ezra Merkin?

PE: I have met Ezra Merkin several times.

TRANSLATOR: I met Ezra Merkin on several occasions.

PE: When I started to work for Reichmuth & Co. in 2004, I used to accompany Christof Reichmuth on trips at the beginning.

TRANSLATOR: When I started to work for Reichmuth & Co in 2004 I was able to accompany Mr Reichmuth on several trips.

PE: On the trips we visited many hedge fund managers.

TRANSLATOR: And during these trips we met several hedge fund managers.

PE: These included Ezra Merkin, who was responsible for Ariel and Ascot.

TRANSLATOR: And among others we met also Ezra Merkin who was responsible for Ariel and Ascot.

PE: Later, I made these trips alone.

TRANSLATOR: Later on I did the trips alone.

PE: And Ezra Merkin was in Switzerland occasionally, and he visited us.

TRANSLATOR: And Ezra Merkin was from time to time also in Switzerland and he... I didn't understand that...

PE: Visit.

TRANSLATOR: And he visited us.

MALE: When, what were the circumstances?

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TRANSLATOR: When and what were the circumstances?

PE: As I said, that first meeting was during 2004.

[01:30:02]

TRANSLATOR: As I said before, the first meeting took place during the year 2004.

PE: The first meeting that I, in which I participated personally.

TRANSLATOR: The first meeting where I personally participated.

PE: And where I met Mr Merkin.

TRANSLATOR: And where I met Ezra Merkin, Mr Merkin.

PE: And the reason was that we regularly visited our hedge fund managers.

TRANSLATOR: And the reason was that we visited our hedge fund managers on a regular basis.

MALE: How often did you have contact with Merkin?

TRANSLATOR: How often did you communication with Merkin?

PE: I would say that we had one or two meetings a year.

TRANSLATOR: I would say that we had one to two meetings every year.

PE: And irregular telephone or email contact.

TRANSLATOR: And irregular contacts via email or telephone.

MALE: In what way were you in contact with him?

TRANSLATOR: How would you communicate with him?

PE: As I said, we had meeting, that is face to face meetings.

TRANSLATOR: As I said before, we had personal meetings.

PE: Telephone and email contact.

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TRANSLATOR: Did you understand that all or nearly all Ascot's assets were invested in the investment advisory account at ELMIS?

MALE: ELMIS stand for [INDISCERNIBLE 01:57:40]

PE: No, I always understood that Ascot followed its own strategy.

TRANSLATOR: No, my understanding was always that Ascot was performing its own strategy.

PE: And always purchased securities in its own name.

TRANSLATOR: And purchased securities on its own behalf, always.

MALE: Were you aware that Madoff made investment decisions for Ascot?

TRANSLATOR: Was it your understanding that Madoff was making investment decisions for Ascot?

PE: No.

TRANSLATOR: No.

PE: He was the broker.

TRANSLATOR: No, he was the broker.

MALE: Was Madoff ever identified as the executing broker for Ascot?

TRANSLATOR: Was Madoff ever described as Ascot's executing broker?

PE: My understanding was that Ezra Merkin was Ascot's investment manager.

TRANSLATOR: To my understanding Ezra Merkin was in the investment manager for Ascot.

PE: He had to buy and sell securities in order to implement his strategy.

TRANSLATOR: And in order to perform his strategy or to ensure his strategy he had to buy or sell securities.

PE: And that is only possible via a broker.

TRANSLATOR: It's only possible to do it as you're a broker.

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PE: And therefore, the trading orders went to Madoff Securities.

TRANSLATOR: And this is why the trading orders went to Madoff Securities.

PE: In this sense, Madoff Securities is the executing broker, yes.

TRANSLATOR: In this sense Madoff Securities is the executing broker, yes.

MALE: In addition, the second part of the question, by whom or in what context was he identified as the executing broker.

TRANSLATOR: And the second part of the question would be who or what described him as an executing broker?

[02:00:00]

PE: You could see that in the fund documents.

TRANSLATOR: You could see it when looking into the fund document.

PE: And that was also confirmed to us in discussions with Ezra Merkin.

TRANSLATOR: It was also confirmed to us during the conversations with Ezra Merkin.

MALE: Were you aware that Merkin made transaction decisions in the name of BLMIS accounts?

TRANSLATOR: Was it your understanding that Merkin was making trading decisions on behalf of any BLMIS account?

PE: [INDISCERNIBLE 02:00:52] said was Ezra Merkin was the investment manager for the Ascot fund and not for any BLMIS accounts.

TRANSLATOR: No, as far as I was aware, Ezra Merkin was the investment manager for the Ascot fund and not for other BLMIS accounts.

MALE: Were you aware that BLMIS functioned as a depository for the assets in Ascot's accounts with BLMIS?

TRANSLATOR: Did you understand that BLMIS was a custodian of assets for Ascot's BLMIS account?

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PE: My understanding was that each... [INDISCERNIBLE 02:01:49]. Sorry can you [INDISCERNIBLE 02:01:46]?

MALE: Were you aware that BLMIS functioned as a depository for the assets in Ascot's accounts with BLMIS?

TRANSLATOR: Did you understand that BLMIS was the custodian of assets for Ascot's BLMIS account?

PE: My understanding was that Madoff Securities was the prime broker for...

TRANSLATOR: It was my understanding Madoff Securities was the prime broker for...

PE: for the Ascot fund.

TRANSLATOR: For the Ascot fund.

PE: And that could include the custody of securities.

TRANSLATOR: And this could involve the being the custodian for the securities.

MALE: Did you ever have the impression that Ascot also made other investments in BLMIS or investments other than the investments in BLMIS made up a central part of the investment strategy of Ascot?

TRANSLATOR: Were you ever under the impression that Ascot invested anything other than in BLMIS or that investments made other than in BLMIS were essential part of asset investment strategy?

PE: My understanding was always that Ascot invested in securities, not in a different account.

TRANSLATOR: It was my understanding... my understanding was that Ascot always invested in other in securities but not in other account.

PE: So Ascot held the securities in its own name.

TRANSLATOR: Ascot was held the securities on its own behalf.

PE: And did not invest in other accounts.

TRANSLATOR: And has not invested in other accounts.

MALE: What was your understanding of the split-strike strategy of BLMIS?

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PE: I was involved later in the monitoring process.

TRANSLATOR: Later on in the monitoring process it was me who was involved, it was I who was involved.

PE: And later still, we increased the size of the team, and then members of our team were integrating, also in the monitoring.

TRANSLATOR: And later on, our team has become leader and some more persons of our team, more employees of our team were involved with the monitoring.

MALE: Which other Reichmuth & Co. employees were involved in the decision to invest in Ariel?

TRANSLATOR: What other Reichmuth & Co employees were involved in the decision to invest in Ariel?

PE: Christof Reichmuth for the initial investment, and I don't know to what extent the other employees were involved.

TRANSLATOR: For the initial investment decisions, Christof Reichmuth, and the other employees, I don't know what, to what extent they took part in the decision making.

MALE: What was your understanding of Madoff's role in relation to Ariel before 11 December 2008?

TRANSLATOR: Prior to December 11, 2008, what did you understand Madoff's role to be with regards to Ariel?

PE: My understanding was that he did not have any role at all.

TRANSLATOR: From my understanding, he did not play any role.

PE: Not as broker nor in any other role.

TRANSLATOR: Either as broker nor in any other function.

PE: And there was no mention in any shape or form that there was a relation or connection with Madoff or with Madoff Securities.

TRANSLATOR: And it was never mentioned on no occasion that there was any connection to Madoff Securities, to Madoff or Madoff Securities.

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TRANSLATOR: The next question will be deleted because it also relates to the answer if it would have been yes.

MALE: Were you aware before 11 December 2008 that Ariel had invested part of its capital in BLMIS?

TRANSLATOR: Prior to December 11, 2008, did you understand that Ariel invested a portion of its capital with BLMIS? No.

MALE: The next question is not required.

TRANSLATOR: Next question deleted.

MALE: Did you ever discuss Ariel's investments in an investment advisory account with BLMIS with Merkin?

TRANSLATOR: Did you ever discuss Ariel's investment in an investment advisory account at BLMIS with Merkin?

PE: No, I didn't even know that there was a connection of any kind to Madoff Securities.

TRANSLATOR: No, I didn't even know that there was any connection to Madoff Securities.

MALE: did you ever discuss the quarterly letter from Merkin to the investors with Merkin?

TRANSLATOR: Did you ever discuss Merkin's quarterly letters to investors with Merkin?

PE: We received the letters and discussed them with Merkin, and I can't remember that there was any reference to Madoff Securities in them.

TRANSLATOR: We received the letters and we talked about those letters with Merkin, but I do not recall that there was anywhere mentioned the connection to the Madoff Securities.

MALE: Did you ever discuss how he classified Ariel's investments?

TRANSLATOR: Did you ever discuss how he categorised Ariel's investment with BLMIS?

PE: No, we never discussed BLMIS in relation to Ariel.

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MALE: Did you ever ask for confirmation of reported transactions for a BLMIS investment advisory account in terms of price, time or volume of the supposed execution?

TRANSLATOR: Did you ever verify trading reported in any BLMIS investment advisory account to confirm price, type or volume of any [INDISCERNIBLE 02:30:47] execution?

PE: First of all, I did not know at the time that Madoff Securities had an advisory business.

TRANSLATOR: First of all, at that time I did not even know that Madoff Securities had an advisory business.

PE: And I never, in any way...

TRANSLATOR: BLMIS.

PE: ...analysed or saw BLMIS products.

TRANSLATOR: And I have never neither analysed nor I've never seen any of the BLMIS product. Should that be included in the transcript, that the witness asked what the word was?

MALE: Did you or someone at Reichmuth ever perform a statistical analysis of the returns from Madoff?

TRANSLATOR: Did you or anyone at Reichmuth ever perform a statistical analysis of Madoff's returns?

PE: No, because I didn't buy any products and I was not aware that such products existed.

TRANSLATOR: No, he [PH 02:32:06 decide] he don't know any of those products and I was not even aware that these products existed.

MALE: Good, that brings us to the end of the fourth set of questions.

TRANSLATOR: Then we've finished with the [INDISCERNIBLE 02:32:27] questions to topic number 4.

MALE: And we move on to the additional questions.

TRANSLATOR: And we would like to [INDISCERNIBLE 02:32:36] the opportunity for additional questions.

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MALE: So, were these the same reasons for Matterhorn's requested redemptions in Ariel during that same time period?

MALE: Yes.

TRANSLATOR: And the reasons that you requested the redemptions from Ariel were the same?

PE: Yes.

TRANSLATOR: The answer is yes.

MALE USA: Did Mr Merkin ever tell you that he was the investment manager for Ascot?

TRANSLATOR: Did Mr Merkin ever tell you that he was the investment manager for Ascot?

PE: My understanding was always that he was the investment manager. That comes initially from the offering memorandum.

TRANSLATOR: To my understanding, he was always the investment manager, first of all it was mentioned in the [PH 02:37:32 offering] memorandum.

PE: and we asked him at various intervals whether there were any delegations, sub-advisory agreements.

TRANSLATOR: And we also from that point asked whether there was INDISCERNIBLE 02:37:49] advisory agreements.

PE: And he always said no, so we had to assume that he was the investment manager.

TRANSLATOR: And he always answered no to those questions so that we assumed that he was the investment manager.

MALE: Do you recall the first time when you may have asked Mr Merkin if he had delegated any of the investment management responsibilities for Ascot?

TRANSLATOR: Can you remember the first time that you asked Mr Merkin whether he delegated any of his investment management responsibilities related to Ascot.

PE: If you are asking in which meeting I asked him first? I can't remember.

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PE: Because it was our own offering memorandum, the offering memorandum of Reichmuth Matterhorn.

TRANSLATOR: Because according to our own offering memorandum, the offering memorandum that was issued by Reichmuth Matterhorn...

PE: We are not permitted to invest in fund of fund constructs.

TRANSLATOR: For us, we have restrictions, we are not allowed to invest in contractions like fund or funds.

PE: And that was the reason we always asked this question.

TRANSLATOR: And this was always the reason why we ask this question each time.

MALE USA: In the course of your communications with Mr Merkin, did he ever disclose that Madoff was managing any portion of Ascot's assets?

TRANSLATOR: During your communications with Mr Merkin, did he ever mention that Mr Madoff managed any portion of Ascot?

PE: No.

TRANSLATOR: No.

MALE: In the course of your communications with Mr Merkin, did he ever disclose that Mr Madoff was acting as a broker for Ascot?

TRANSLATOR: During your communications with Mr Merkin did he ever mention that Mr Madoff was a broker for Ascot?

PE: That could be seen in the offering memorandum and Ezra Merkin also confirmed that to us, yes.

TRANSLATOR: This was mentioned in the offering memorandum and Mr Merkin also mentioned this fact to us.

MALE: Do you recall the specific date when Mr Merkin first mentioned this fact to you, that Mr Madoff was acting as a broker for Ascot?

TRANSLATOR: Do you remember when Mr Merkin first mentioned that Mr Madoff was acting as a broker for Ascot?

PE: No, I can't tell you when that was.

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TRANSLATOR: No, I cannot really tell you when it was exactly.

MALE: In the course of your communications with Mr Merkin, did he ever disclose that Mr Madoff was acting as a custodian for Ascot?

TRANSLATOR: During your conversations with Mr Merkin did he ever tell you that Mr Madoff was a custodian for Ascot? Or was acting as a custodian?

PE: My understanding was that custody could be with Madoff Securities, yes,

TRANSLATOR: My understanding was that custody could have been with Madoff Securities.

MALE: What was the basis of that understanding?

TRANSLATOR: What was the basis of your understanding?

PE: I think the offering memorandum it is mentioned that Ascot has or could have two prime brokers, one was Madoff securities.

TRANSLATOR: I think that the offering memorandum said that Ascot could have two prime brokers and one of them was Ascot Securities.

PE: and it was also clear from the discussions with Ezra Merkin that he traded through Madoff Securities.

TRANSLATOR: And from the communications we had with Ezra Merkin we learned that he was trading with Madoff Securities not with [FOREIGN 02:45:04]xxx[FOREIGN 02:45:05].

[02:45:06]

PE: Through.

TRANSLATOR: Through, sorry, not with, delete please.

MALE: Earlier today you mentioned that you had a brief conversation with Mr Merkin after the Madoff Ponzi scheme was revealed, is that accurate?

TRANSLATOR: This morning you mentioned that you had a brief conversation with Mr Merkin after this Ponzi scheme was revealed, is that right?

PE: Yes.

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PE: And it also stated, this is not a quote, but: we have to assume the worst, or something along those lines.

TRANSLATOR: But I believe that this letter completes something like, without me wanting to quote it, but something like we would assume the worst.

PE: And the telephone communication with Ezra Merkin was after we knew about this communication.

TRANSLATOR: And I believe that the phone conversation with Ezra Merkin took place after we had received this letter, this [INDISCERNIBLE 02:49:20].

MALE: Prior to receiving Mr Merkin's letter that you just described on December 12th, 2008, did you have any knowledge that there was a connection between Ariel and Madoff?

TRANSLATOR: Before you received this letter from Mr Merkin of 12 December that you just mentioned, did you have any knowledge of any connection between Ariel and Madoff?

PE: I had no knowledge at all of it, and also no reason to assume that there was a connection between Ari and Madoff Securities.

[02:50:07]

TRANSLATOR: No, I had no knowledge about this fact and there is no, not even a reason to assume that there would be such a connection between Ariel and Madoff Securities.

MALE: Did Mr Merkin's letter of December 12th, 2008, indicate to you that there was in fact a connection between Ariel and Madoff?

TRANSLATOR: This letter of 12 December 2008, did it give you any indication that there was a connection between Ariel and Madoff?

PE: I can't remember the exact wording, but I think so, yes.

TRANSLATOR: I do not really recall the exact wording but I believe yes.

MALE: On the call that you described earlier with Mr Merkin after receiving this December 12th 2008 letter, did you discuss Ariel with Mr Merkin on that call?

TRANSLATOR: In the telephone call that you had with Mr Merkin after receiving the letter of 12 December 2008, did you discuss the subject of Ariel with Mr Merkin?

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MALE: Object to form.

TRANSLATOR: I would like to object to this questions, I object to the form. And the question was: before December 2008, had you understood that Ascot had an account with Madoff Securities through which shares and options were bought in the name of Ascot?

PE: Ascot had a strategy and in order to implement this strategy they traded securities through Madoff Securities, and they were always held in the name of Ascot.

TRANSLATOR: Ascot had its own strategy and in order to implement this strategy So, in order to implement this strategy... how did you put it exactly...may I?

MALE: traded securities.

TRANSLATOR: I can't understand that either, have you recorded that? Also not?- Ascot had its own strategy and in order to implement its strategy- In order to carry out this strategy...

PE: Yes.

TRANSLATOR: Securities were traded through Madoff Securities.

NEIL STEINER: And was it your understanding prior to December 2008 that Mr Madoff directed the trading of securities in Ascot's account at Madoff Securities?

TRANSLATOR: Did you know or did you understand before December 2008 that Mr Madoff was the manager, or had given the orders for trading of securities in Ascot's account at Madoff Securities?

MALE: Object to form.

TRANSLATOR: I would like to raise an objection regarding form.

PE: My understanding was that Ezra Merkin was the investment manager.

TRANSLATOR: My understanding was that Ezra Merkin was the investment manager.

PE: He wanted to implement the strategy.

[03:55:01]

TRANSLATOR: He wanted to implement his strategy.

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PE: And he needed to have a broker to do that.

TRANSLATOR: In order to do so, he needed a broker.

PE: And he gave trading orders to this broker.

TRANSLATOR: And he gave trading orders to this broker.

PE: And the broker carried out these orders.

TRANSLATOR: And the broker executed this [INDISCERNIBLE 03:55:24].

NEIL STEINER: So just so I understand, it was your understanding prior to December of 2008 that Mr Madoff did not direct the trading of securities in Ascot's account at Madoff Securities, is that right?

TRANSLATOR: So, have I understood you correctly, as far as you knew before December 2008, you didn't know that Mr Madoff did not manage or did not direct this trading of securities in Ascot's account with Madoff Securities?

NEIL STEINER: Object to form and [INDISCERNIBLE 03:56:10].

TRANSLATOR: I object to the form and because the question has already been asked.

MALE: Have you already translated the question?

TRANSLATOR: I have only translated the objection from Mr Jacobs. He would like to object to the form because the question has already been asked and was already answered. That was his objection.

MALE: That's what should go in the transcript.

TRANSLATOR: Sorry, I didn't translate. So, have I understood correctly that, as far as you knew, before December 2008 Mr Madoff did not directly trade securities in Ascot's account at Madoff Securities, is this correct?

PE: I think I said that before, as far as I understand it...

TRANSLATOR: I believe that I said, so before I answered this before, so my understanding is...

PE: That the broker, Madoff Securities...

TRANSLATOR: That the broker, Madoff Securities...

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PE: ...carried out the orders which it received from Ezra Merkin, the Ascot manager.

TRANSLATOR: Has executed the orders that he received from the manager, Ezra Merkin.

NEIL STEINER: Was it your understanding prior to December 2008 that Mr Madoff executed the strategy in Ascot Partners account?

MALE: Object to form and [INDISCERNIBLE 03:58:02].

TRANSLATOR: I object to the form because the question has already been asked. And the question is: Did you know prior to December 2008 that Mr Madoff carried out a strategy in the name of Ascot Partners?

PE: I understood that the investment manager, Ezra Merkin, followed a strategy.

TRANSLATOR: I understood it so far that Ezra Merkin was the investment manager and he was pursuing a strategy.

PE: And in order to implement this strategy.

TRANSLATOR: And in order to implement the strategy...

PE: He had to buy and sell securities through a broker.

TRANSLATOR: He has to use a broker to buy and sell securities.

PE: He gave orders to Madoff Securities.

TRANSLATOR: He gave orders, [INDISCERNIBLE 03:59:10] orders to Madoff Securities.

PE: And Madoff Securities carried out this trading order.

TRANSLATOR: And Madoff Securities executed this trading order.

NEIL STEINER: Was it your understanding that Madoff Securities, sorry, that Mr Madoff for Madoff Securities decided when to make purchases in the account?

MALE: Object to form and ask [INDISCERNIBLE 03:59:33].

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TRANSLATOR: I would like to object to the form because the question has already been asked and answered. And the question is: Did you know that Madoff Securities or Madoff decided when which purchases had to be made on this account?

[04:00:11]

PE: As I said, the order came from the investment manager.

TRANSLATOR: As I said, the order came from the investment manager.

PE: And the broker has to carry out the orders.

TRANSLATOR: And the broker had to execute these orders...

PE: According to the instructions the investment manager provides with the order.

TRANSLATOR: According to the instructions that he received together with this order from the investment manager.

NEIL STEINER: Was it your understanding that Mr Madoff for Madoff Securities decided the price at which to buy or sell securities in the account?

TRANSLATOR: Was it your understanding that Mr Madoff or Madoff Securities decided what the price was and for which these securities were sold?

MALE: Same objection.

TRANSLATOR: The same objections.

PE: My understanding was that the strategy was clearly formulated.

TRANSLATOR: My understanding was that the strategy was clearly formulated.

PE: I don't know the details of the instructions the investment manager gave.

TRANSLATOR: I do not know in detail which kind of instructions the investment manager actually formulated.

PE: But the order came from the investment manager.

TRANSLATOR: But the order came originally from the investment manager.

PE: And in this context the investment manager is responsible.

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TRANSLATOR: I do not remember anyone mentioning any scepticism.

MALE: What was discussed at the meeting with Madoff on 17 October 2007?

TRANSLATOR: What was discussed at the October 17, 2007 meeting with Madoff?

PE: It was a fairly general discussion.

TRANSLATOR: It was a discussion that was kept pretty general, it was a general discussion.

PE: About the brokering business of Madoff Securities.

TRANSLATOR: About the broker business of Madoff Securities.

PE: How the company was set up?

TRANSLATOR: How the company was created.

PE: I believe that I recall that it was a family-run company.

TRANSLATOR: As far as I recall or I think that I remember this, that we talked about the fact that it was a family owned company.

PE: And we talked in a fairly general way about the challenges and the market, from a broker's point of view.

TRANSLATOR: And we talked in general about the challenges in the market environment of the broker business.

[05:30:02]

PE: I would say it was a general discussion.

TRANSLATOR: I will say this, the whole conversation was a general conversation.

MALE: During the meeting were any discussions of concerns about the apparent returns achieved by Madoff and other indications of fraud?

TRANSLATOR: Were any concerns about Madoff's purported report or any other [INDISCERNIBLE 05:30:37] of fraud discussed during this meeting?

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PE: I can't remember talking about any investments at all, or an investment strategy or any returns.

TRANSLATOR: I do not remember that we talked at all about any investment strategies or any returns.

MALE: Was the supposed trading strategy of the business unit investment advisory discussed?

TRANSLATOR: Was the purported trading strategy or the investment advisory business unit discussed?

PE: No.

TRANSLATOR: No.

PE: I don't think I even knew that there was an investment advisory business unit.

TRANSLATOR: I did not even know that an investment advisory unit existed.

MALE: After the meeting, did Reichmuth & Co. invest any further funds in Ascot, Ariel or in any other investment vehicle that invested in the investment advisory business of BLMIS or which brought returns as a result of such investments?

TRANSLATOR: After the meeting did Reichmuth & Co invest additional funds in Ascot, Ariel or any other investment vehicle which invested in it or provided returns based on investment in BLMIS investment advisory business?

PE: We have never invested in any BLMIS products.

TRANSLATOR: We had never invested in any of the products within BLMIS advisory.

PE: And as for the funds Ascot and Ariel, we made further investment in them because at the time they showed strong growth.

TRANSLATOR: I believe that we had performed further in this investment in Ascot and Ariel but this was due to the fact that Matterhorn was very successful at that time.

PE: We had high monthly influx or subscriptions.

TRANSLATOR: And we had large monthly influx of subscriptions.

PE: And the allocations - indiscernible [05:33:1] so we had to make additional investments.

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TRANSLATOR: First he started with the question, in the same meeting were there any discussions related to Reichmuth Matterhorn or any Reichmuth Matterhorn investments other than Ariel, and then he corrected himself and wanted to reword his question. Were there any discussions in the meeting in October 2007 related to any investments of Matterhorn, apart from Ascot?

PE: I can't remember that we discussed any fund.

TRANSLATOR: I do not remember that we talked about any fund during this meeting.

PE: It was a more of a general discussion.

TRANSLATOR: This was just a general discussion...

PE: About Madoff Securities.

TRANSLATOR: About Madoff Securities.

MALE: Did you ever conduct any due diligence directly into any Madoff related investment product?

TRANSLATOR: Did you ever carry out a due diligence in relation to any Madoff investment products?

PE: No. I did not even know that they existed, we never carried out any due diligence on such products.

TRANSLATOR: I didn't even know that they exist, we never performed any due diligence with regards to Madoff products.

PE: And I would also like to add that we never actually did a due diligence on Madoff Securities.

TRANSLATOR: And I would like to include that we never made, performed a due diligence with regards to Madoff Securities.

PE: As far as we understood, Madoff Securities was a broker.

TRANSLATOR: According to our opinion, we assumed that Madoff Securities was a broker.

PE: Through which the funds we were invested in traded.

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[05:40:02]

TRANSLATOR: Through which or which was used by other funds where we invested for trading.

PE: And the main reason for the meeting was, in fact, to get a feeling or an impression of the brokering business of Madoff Securities.

TRANSLATOR: And the major reason for this meeting was to receive a feeling or the perception about the broker business of Madoff Securities.

PE: Actually, the due diligence that we make is related to funds such as Ascot and Ariel.

TRANSLATOR: Because the due diligence is such that we perform in our house is related always to a fund, like such as Ascot or Ariel.

PE: But we check the reputation of the service providers.

TRANSLATOR: And with regard to the service provider, we just checked their education...

PE: And the quality.

TRANSLATOR: And the quality.

PE: But it is not an actual due diligence.

TRANSLATOR: But this is not what you call the due diligence.

MALE: Had you known that a money manager with whom Matterhorn had made an investment had delegated management authority over some or all of those assets to a third party, would Matterhorn have conducted due diligence on that third party?

MALE: Objection to form.

TRANSLATOR: There was an objection to the form. Did you know that a manager that Madoff investments had worked with, would pass on the authority or distribute across some of such investment to third parties... can I start again?

MALE: Hmm..

TRANSLATOR: Did you know that a manager who Matterhorn Investments had made an investment with passed on the authority to a third party, and would Matterhorn carry out a due diligence with this third party?

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MALE: Then we will have our tape recording translated into English and produce the official transcript.

TRANSLATOR: And then after that we will make a decision, we will make, we will give the recording of this hearing to the translator so that the translator together with the protocol who will then make a written translation.

MALE: The parties may submit their bills of costs within the same time period.

TRANSLATOR: The parties can also within the same timeframe submit to the court their invoice.

MALE: Which we will then pass on to the court.

TRANSLATOR: And this invoice will also be forwarded to the court.

MALE: And the... so when, I have already mentioned this, but I repeat it for the sake of good form, when the transcript is available in English, we will submit it together with the tape recording, that is the CD, to the parties so that they can raise any objections within 30 days.

TRANSLATOR: And I said it before but I would like to repeat it for the form that when we have the translation of this audition of the witness, we will forward this translation together with the recording to the parties and the parties will have 30 days to submit their objections or remarks.

MALE: Good, that brings us to the end of the proceedings. Thank you for your perseverance and your patience, and I wish you a pleasant evening.

TRANSLATOR: And this is we have come to an end of this hearing [INDISCERNIBLE 06:24:11] today and I would like to thank you for your patience and for your inputs and I would like to wish a good evening.

DAVID ROSS ELLIOT: And this is the end of DVD 4, Volume 1 in the video deposition today of Mr Patrick Ernay. Going [INDISCERNIBLE 06:24:26] at 5:29pm as it appears on the video screen. Thank you.